

ARKANSAS PUBLIC DEFENDER COMMISSION

Enabling Laws

Act 2093 of 2005

A.C.A. §16-87-201 - 214; Act 1193 of 1993

History and Organization

The Arkansas Public Defender Commission was created by Act 1193 of 1993 (see also, Arkansas Code Annotated §§ 16-87-201 through 214). The Commission was initially created to address a myriad of problems and concerns related to the representation of indigent criminal defendants in Arkansas. The Commission consists of seven members, each of whom is appointed by the Governor. In 1993, the Commission's staff consisted of its Executive Director, three support personnel, and five attorneys in the Capital, Conflicts, and Appellate (CCA) Office. The attorneys in the CCA office are assigned, among other things, the task of representing capital murder defendants throughout Arkansas. Further, the CCA attorneys offer assistance and expertise to attorneys throughout the State who are providing indigent representation. Due to an ever-increasing caseload, in 1995, the staffing of the CCA office was increased. The CCA office now has seven attorneys, two investigators, and two mitigation specialists. The CCA office also has two paralegals who also perform all secretarial work for the central office.

Through the passage of Act 1341 of 1997, and Act 925 of 1997, now Arkansas Rules of Criminal Procedure, Rule 37.5, the Commission's duties and responsibilities were greatly expanded. Prior to the passage of the aforementioned Acts, the Commission was charged with monitoring county-based public defender systems throughout the State, overseeing the CCA office, and insuring that certain minimum standards established by the Commission were met by appointed counsel. With respect to the appointment of private attorneys, the Commission established a certification procedure whereby private attorneys applied for different levels of certification based upon their level of experience. After reviewing the applications and supporting documentation, the attorneys were certified to handle the types of cases commensurate with their level of experience. On an annual basis, certification applications are mailed to all attorneys in the State asking them to complete the applications if they seek appointment in indigent criminal cases. The Commission maintains up-to-date lists of attorneys certified for and interested in appointments for various types of cases in various regions of the State. When a conflict arises, the trial courts contact the Commission to make the necessary appointments. We continually add more attorneys to the list through training and education.

With the passage of Act 1341 of 1997, the State began taking over the funding from the counties of the public defender system. Prior to Act 1341 of 1997, the counties were responsible for paying for indigent representation. As of January 1, 1998, the State assumed the responsibility of paying the salaries for public defender attorneys, some support staff, and all private attorneys appointed to indigent defendants. We also pay all the expenses for all expert assistance furnished to indigent defendants. As part of the state take-over, the Commission was given additional duties, including: allocating resources; recommending to the Judges whom to employ as public defenders; taking care of all the personnel and payroll documentation; disbursing payroll; and paying any and all costs associated with indigent representation. These costs include fees for experts, investigators, court

reporters, interpreters, and appointed private attorneys.

Prior to January 1, 1998, there were 147 county-paid public defender positions throughout the State. When the State initially assumed responsibility for indigent representation, state funding was allocated for 104 attorney positions, more than 40 shy of the number of positions prior to January 1, 1998. This despite the fact that one of the factors cited for the State taking over the system, was the need to reduce caseloads of the public defenders.

On January 1, 1998, fifteen public defenders remained on county payrolls. By January 2001, the counties that were gratuitously paying the salaries of the necessary additional public defenders were warning that this gratuity would come to an end. In order to address this concern, Act 1799 of 2001, provided an additional 22 attorney positions. By splitting some of these positions into job shares, the Commission has been able to more efficiently assure adequate representation throughout the State. The Commission's assignment of attorneys has enabled the public defenders, in most districts, the ability to have caseloads that more closely meet national standards. Despite our best efforts, in other districts, we still have quite a way to go to meet this objective.

Since 1998, there have been several additional judicial positions created and the number of prosecuting attorneys has increased. Further, some districts have split and were automatically provided an elected prosecuting attorney, but not a public defender. The public defenders represent approximately 85% to 90% of all criminal defendants with 60 to 65% of the attorneys of the prosecution. Additionally, until recently, public defenders were responsible for doing all of their own appellate work with no additional compensation. Pursuant to Act 1370 of 2001, part-time public defenders may receive additional compensation for their appellate work. Currently, full-time public defenders cannot receive additional compensation and are responsible for doing all of their own appellate work as well as trial work. In contrast, the attorney general's office prepares all of the appellate abstracts and briefs for the prosecuting attorneys throughout the State.

We have submitted a budget request for the upcoming Legislative Session that addresses our current needs in light of previous funding and staffing limitations. Since January of 1998, we have been diligently compiling caseload information so that we could more effectively address the needs of the statewide system. The additional positions allocated in 2001 have allowed us to address the excessive caseloads in many districts and have brought them down to more manageable levels. Nevertheless, we are still above national standards in many areas. Further, with the rising crime rate, our caseloads are creeping up precipitously.

The Public Defender Commission is also responsible for payment of private attorneys' fees, investigators, experts, and other expenses when the Court appoints a private attorney to represent an indigent defendant. Since 1998, \$750,000 per annum has been allocated for this purpose. Historically, these expenses have been approximately 1.2 million dollars, significantly more than what has been allocated. This shortfall has resulted in attorneys waiting months to receive payment for their services rendered. In the fall of 2000 and winter of 2001, this shortfall reached "crisis" proportion. Attorneys began filing claims with the State Claims Commission for payment. Legislative Audit conducted a review of the cases pending and trends from previous years, and determined up to \$860,000.00 additional dollars would be needed to alleviate the past shortfall and cover costs in the future. Act 1489 of 2001 appropriated \$866,957 for this purpose with a one-time rollover provision. Also, in 2001, Act 1343 was passed, which requires the Commission, rather than

the local judge, to set the fee for attorneys and experts and to set the expenses. The Commission has established guidelines for payment and there is now uniformity of payment for private attorneys throughout Arkansas. Further, five of the twenty-two public defender positions allocated in 2001 were specifically assigned as conflicts' attorneys. Establishing local conflicts positions has had a positive impact on expenditures by the Commission for payment of private attorneys. Rather than routinely appointing private attorneys to handle conflicts in every case, we have assigned our own conflicts lawyers. The combination of local conflicts' offices and the Commission's ability to regulate fees has resulted in the Commission's ability to return \$253,158.03 to the State Treasury in June 2002. Act 2093 of 2005 established a Conflicts Office in NW Arkansas that provides representation in cases where the county's public defender offices in Benton, Washington, Carroll, Madison, Crawford and Sebastian counties are unable to provide representation. A specific appropriation for this office included two attorney positions and one paralegal. Additional existing conflict positions are managed through the Northwest Arkansas Conflicts Office.

During the 2005 legislative session, the Commission requested four mitigation specialist positions. This request was made in an attempt to economically comply with Wiggins V. Smith (539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed. 2d471 (2003)). In Wiggins V. Smith the United States Supreme Court unequivocally required the use of mitigation specialist in **all** death penalty cases. This mandate was reaffirmed and re-emphasized in Rompilla V. Beard, 2005 WL 1421390 (June 20, 2005). Pursuant to Act 2093 of 2005 the Commission was given two mitigation specialist positions.

Further, pursuant to Arkansas Rules of Criminal Procedure, Rule 37.5, the Commission is charged with paying any and all expenses relating to the representation of individuals under a sentence of death who are pursuing state post-conviction relief. These expenses include attorneys' fees, investigators' fees, experts' fees, and any other fees or expenses incurred during post-conviction proceedings. In an effort to assist the trial courts, the Commission has created a list of attorneys willing, and qualified, to accept these types of appointments. Unlike trial fees and expenses, these fees are still set by the judges that thwart the Commission's ability to maintain fiscal responsibility. Just as the Commission now sets the fees for indigent representation of those whose loss of liberty is at stake, the Commission needs to establish the fees to be paid in Rule 37.5 cases. Such a procedure allows both for uniformity and fiscal responsibility.

During the 1999 Legislative Session, the Ombudsman Division was created within the Commission. At the time of its creation, there were eight (8) social workers and three (3) support staff within the Ombudsman Division. The Ombudsmen are charged with insuring that children sentenced to state custody are safe, both physically and mentally, and that they are receiving necessary services. A move was made in the 2001 session to eliminate the Ombudsman Division and ultimately, funding was cut by \$70,000. During the 2005 session all positions were cut except a grade 22 and a grade 20. At the present time there are only two (2) Ombudsmen positions and no support staff within the Division. Again, the Ombudsmen are charged with advocating for the kids in state custody and work countless hours, both during regular working hours and on nights and weekends, having assisted the Judges throughout the state who handle juvenile cases. The Ombudsmen have had a positive impact on many children's lives.

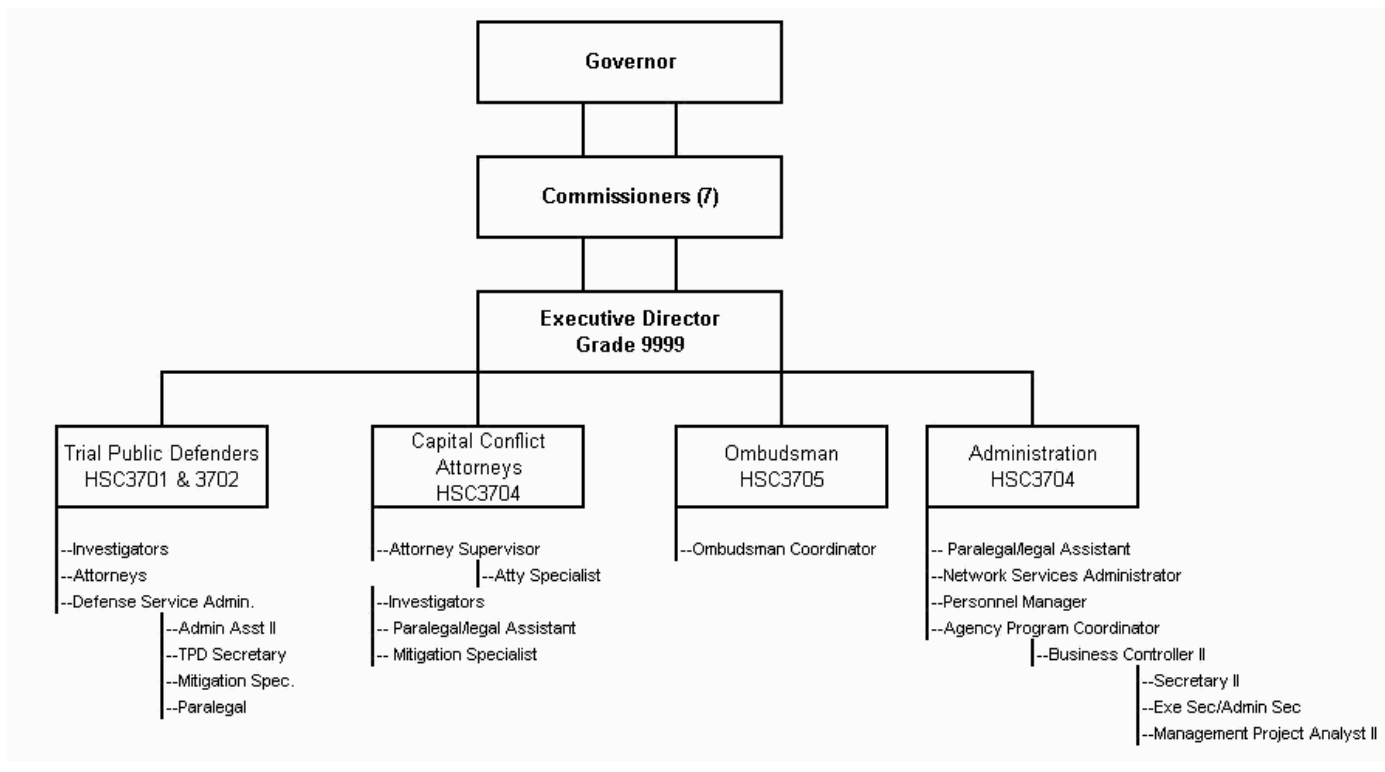
Act 2093 of 2005 added two new positions in the Washington County Drug Court. We now provide a public defender and drug court administrator for Washington County that were previously federally funded. These positions are being funded out of our fees collected by the courts and the bond

companies.

The last Legislative Session provided the Commission with more control over its budget. The Commission was given absolute discretion in the setting of fees for private attorneys, experts, and investigators for indigent defendants. The 2001 Legislature clarified the types of cases to which a public defender may be appointed so that there is no longer any question. If one is facing a risk of loss of liberty, one is entitled to the services of a public defender. We are no longer doing divorce cases for prison inmates, custody cases, paternity cases, or post-conviction cases that do not involve the death penalty. We are, however, responsible for representing children in state custody, including foster children, subject to police questioning and adult protective services cases wherein DHHS seeks to take custody of an elderly person.

The Commission is acutely aware of funding limitations, and primarily due to these limitations, urged the enactment of Act 1564 of 1999, which allows courts to assess a fee of ten to one hundred dollars at the time of appointment of counsel in order to defray the costs of the public defender system. Again in 2003, the Commission took an active role in the enactment of Act 1778, which allowed for a ten-dollar fee to be charged and collected by all bail bond companies on each bond. –These fees are payable to the Public Defender User Fee Fund. The 2005 session saw the passage of Act 1956, which added an additional ten-dollar fee to Act 1778’s fee. These fees, paid quarterly, are also designated to help defray the cost of the public defender system, statewide and in each individual county. Of the additional Ten Dollars (\$10.00) assessed pursuant to Act 1956, seven dollars goes to the Commission and three dollars (\$3.00) goes to the counties to defray the cost of the local offices.

The Commission welcomes the additional duties, responsibilities, authority, and obligations. The objective of the Commission has been, and remains, to insure that all persons facing a risk of loss of liberty are provided effective and constitutionally mandated representation. Our requests for this biennial budget are with that preeminent goal in mind.



Agency Commentary

All of the Public Defender Commission's ("Commission") change level requests are made with the goal of increasing the availability, the effectiveness, and the efficiency of both the Commission and the Trial Public Defender's Offices throughout the State of Arkansas. While being mindful of our Constitutional mandate of providing effective representation, these requests are made in an effort to more efficiently and effectively expend the State's limited resources. Finally, the requests are made with the knowledge of a rather recent United States Supreme Court decision, which substantially affects the role of the attorneys and their representation of clients. Courts have been increasingly carefully scrutinizing the effectiveness of counsel and have been particularly critical of over-burdensome caseloads and the lack of resources provided for the representation of indigent defendants. The Commission is aware of the need to provide finality to its cases as well as to provide effective assistance to counsel; hence, the following requests are made with those objectives in mind.

Public defenders, like prosecutors, are essential to the workings of the court. Approximately 80 - 85% of the persons prosecuted by the State of Arkansas are represented by Public Defenders. Without an effective public defender standing beside a criminal defendant, the court system in Arkansas could not function properly. Obviously, our Public Defenders do more than merely stand beside their clients. An inability to function effectively as a Public Defender and to proceed on cases would serve no one. If the public defender system fails, the entire court system fails. If we are unprepared due to unmanageable caseloads or inadequate funding, justice is compromised. Consequently, our requests are more pressing this year as the crime rate has increased and our workload has increased. The increase began in 2005, but it has jumped considerably thus far in 2006.

Trial Public Defender - Appropriation 530

Personnel

The Commission is requesting four (4) Class B Public Defenders, three (3) Mitigation Specialists, and three (3) Management Project Analysts II

1. Class B Public Defenders

We currently have 141 Full Time Equivalent Attorneys in the system. Our caseloads have been going up over the last two years necessitating the need for four additional attorney positions. More specifically, the juvenile caseload and the serious offense caseload have risen greatly. The four positions would be used to cover rising caseloads and conflicts in other areas of the State. We have been asked several times by judges for additional attorney help. Much to their dismay, and ours, we have been unable to provide additional attorneys. Finally, the addition of drug courts in many areas has added to the court and time demands of public defenders throughout the State. In order to meet the increasing caseload needs and court appearances, it is essential that we have additional attorneys.

2. Mitigation Specialist

The three Mitigation Specialist positions requested would be both efficient and cost effective for the Commission and for the State. Pursuant to *Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471, (2003), the United States Supreme Court has said that in any and all death cases, one must have a mitigation specialist to thoroughly and exhaustively research the capital defendant's social history. Strategic trial decisions cannot be made absent such an investigation. *Wiggins* stands for the proposition that an attorney, who does not do such a thorough and exhaustive investigation, is ineffective. Because of *Wiggins*, it is clear that each and every death penalty case requires a mitigation specialist. Not providing a mitigation specialist would be tantamount to asking for a reversal of a case. Again, the Commission is aware of a need for finality in cases and that re-trying cases is good for neither the State nor the defense. At the present time, the Commission has been required, in many cases, to pay private mitigation specialists at a rate of approximately \$75.00 an hour. Though we now have four mitigation specialists on staff, this number has proven to be far fewer than necessary to cover our ever-expanding caseload. Clearly, it would be more efficient and cost effective for the Commission to employ mitigation specialists on staff at a rate of \$14.13 an hour. For this reason, the Commission is requesting the authority and the appropriation to employ three mitigation specialists. The number of mitigation specialists is essential, in that, a mitigation specialist will spend anywhere from 800 to 1500 hours on any particular case. Over the last year, the Commission has experienced a surge in capital murder cases. We are currently representing 12 capital murder defendants in the CCA office. Additionally, we currently have 41 private attorneys representing capital murder defendants throughout the State. These figures do not include death cases in local public defender offices, for which we provide expertise, support and mitigation specialists. For every death case, we must have two attorneys, one mitigation specialist, one investigator and one paralegal. These three requested positions would assist both trial public defenders and private attorneys in representing capital murder defendants. Their presence is required, not discretionary. The only question is how we will pay for them. The Commission urges the General Assembly to allow us to obtain positions and funding so that we may put mitigation specialists on staff rather than paying independent contractors at a significantly higher rate.

3. Management Project Analyst II

This request is for three positions that will work under administrative direction to provide necessary services to our growing Hispanic clientele. These employees will be used to provide interpretive services when dealing with defendants, witnesses and families, as well as provide liaison and investigative services with these clients.

The request for three (3) Management Project Analyst II on staff rather than privately retained Interpreters is necessary to carrying out the task of providing effective assistance of counsel and being fiscally responsible. Over the last several years, the need for an interpreter has become apparent in the foregoing areas and has, in fact, gotten to the point that it is essential to carrying out the task of providing effective assistance of counsel. We literally need interpretive services on a daily basis. At this time, we pay interpreters at the rate of \$40 to \$45 per hour. With the ever-increasing need, this expenditure will be expanding greatly. Having someone on staff and paid \$14.13 at a minimum to \$27.07 at a maximum per hour will more than pay for itself in the long run. We would locate one of these positions in northwest Arkansas, one in southwest Arkansas and one in central

Arkansas. Each would be available to travel throughout the State as needed.

Jay Saxton, Chief Public Defender in Bentonville, estimated that at this time 16% of his office's clients are Hispanic. Often they and their families speak no English. Denny Hyslip, Chief Public Defender in Fayetteville, indicated that during the first six months of 2006, his office had represented 96 non-English speaking clients. Further, they had conducted 129 client interviews at the jail or in their office with persons who spoke no English. LaJeana Jones, our Managing Public Defender in DeQueen, has indicated that she has a large Hispanic client base that continues to grow. She noted that they have many clients in juvenile court as well as circuit and district court who speak and read no English.

The foregoing areas are where the need is greatest. However, we have had cases on non-English speaking clients throughout the State and, in fact, have a number of juveniles in Pulaski County for which we need an interpreter.

An interpreter is essential not just in court, but to facilitate communication so that we can provide Constitutionally mandated effective assistance of counsel. We must be able to communicate with the client, his family, and his witnesses. Often, none of the people involved in a case with a non-English speaking client speak English. We cannot interview the client and the witnesses if we cannot effectively communicate with them. Additionally, we must be able to explain various forms and documents, which must be accurately translated. Discussing suppression issues and Miranda rights forms is impossible if one cannot speak fluently in the client's native language. These interviews and this communication are not something that can be facilitated in court. Nor can we simply rely on other staff who have taken some Spanish in school. The person must be fluent, be able to converse easily and be aware of various dialect nuances. Cultural familiarity and sensitivity would be beneficial as well. We must be able to adequately work up a case, and communication is a key factor.

Having an interpreter on staff and acting as part of the defense team will improve our defender's effectiveness, improve the client relationship and serve the administration of justice. The sheer number of Hispanic clients we now have has begun to impede various courts' dockets. Waiting on the availability of a private interpreter sometimes means that we cannot get a case ready for trial expeditiously. Continuing cases for lack of an interpreter serves no one.

The Commission is transferring one position to appropriation 530 - Trial Public Defender, to facilitate better internal control. The position will be utilized to help with payroll, accounts payable and receivable.

M & O Request

We are requesting maintenance and operation budget increases in:

- Postage - The postage rate has increased. Further compilation of documents can mean paying for shipping documents that could include thousands of pages.
- In state and out-of-state travel - The above-mentioned positions require an extensive amount of travel to interview witnesses and prepare for trial. Some of this travel is out of state, particularly with our Hispanic clients.
- Conference and Travel Expense - to maintain legal or specialist certification and training

- Membership dues - Bar Association Dues
- Office supplies - chair, desk and general office supplies
- Computers -The above mentioned positions require travel so we will be ordering laptops instead of desktop computers
- Parking and phone services

for the above position additions. These, of course, will not be needed if positions are not approved.

In addition to the above request we are asking for an increase in the Northwest Conflicts office for:

- Mileage and meals/lodging. The rate of mileage reimbursement is increasing with the cost of gas and, of course, the cost of meals/lodging is also on the rise. The increase of cases will require more travel and overnight stays.

Disbursement Appropriation Request

The Commission is acutely aware of funding limitations, and primarily due to these limitations, urged the enactment of Act 1564 of 1999, which allows courts to assess a fee of ten to one hundred dollars at the time of appointment of counsel in order to defray the costs of the public defender system. Again in 2003, the Commission took an active role in the enactment of Act 1778, which allowed for a ten-dollar fee to be charged and collected by all bail bond companies on each bond. These fees are payable to the Public Defender User Fee Fund. The 2005 session saw the passage of Act 1956, which added an additional ten-dollar fee to Act 1778's fee. These fees, paid quarterly, are also designated to help defray the cost of the public defender system, statewide and in each individual county. Of the additional Ten Dollars (\$10.00) assessed pursuant to Act 1956, seven dollars (\$7.00) goes to the Commission and three dollars (\$3.00) goes to the Counties to defray the cost of the local offices.

The Commission would like to request additional appropriation in Fund Center 530 to accommodate this disbursement to the Counties on a quarterly basis.

Appropriation 337 - Public Defender State Operations

Personnel

The Commission is requesting one (1) Class B Public Defender and one (1) Paralegal.

1. Class B Public Defender

We would like to add one attorney position to the Capital, Conflicts and Appellate office to address the rise in murder cases. When a CCA attorney handles a death case verses a private attorney, the state saves tens of thousands of dollars. In 2003 the CCA office handled 17 death cases. There have been 12 death cases assigned to the CCA office since January with the promise of many more before December. Bill Simpson, Chief Public Defender in Pulaski County, has advised that he is going to need significant help in addressing the number of murder cases his office is now handling. If the current trend continues, we will be at near crisis level very soon.

2. Paralegal

The Commission is also requesting one (1) paralegal position. This request is not made lightly. The APDC has two paralegals to support our eight Capital Conflict Attorneys and act as secretary to our Executive Director. We are requesting an additional paralegal position in our FY08/09 Biennial Budget.

Our two paralegal positions have handled the following caseload. Over the next couple of years, this caseload will greatly increase, given the increase in pending cases.

<u>Year</u>	<u>Cases</u>	<u>Trials</u>	<u>Appeals</u>
2003	17	4	2
2004	25	6	2
2005	19	7	2
2006 (6 months)	12	7	3

With respect to pretrial work, the paralegal's duties include:

- organizing and indexing the file
- preparing and filing all motions
- preparing a motion book for the attorneys and the Court
- traveling with the attorneys and investigators to prepare for trial
- preparing correspondence as needed
- transcribing witness statements
- preparing subpoenas
- and making travel arrangements for witnesses as needed.

With respect to trial work, the paralegal's duties are:

- prepare a trial notebook which can mean organizing and indexing 5 or 6 large boxes of documents
- organizing and indexing exhibits
- preparing jury instructions
- and preparing any necessary motions or briefs during trial.

Finally, with respect to appeals filed in the Court of Appeals or the Supreme Court, the paralegal's duties entail as part of an appeal brief:

- Abstracts - the condensing of thousands of pages of a trial record can result in an abstract of 750 pages or more and can take up to two months or more to finalize.
- During this time an Addendum must also be compiled and it can be 100 to 500 pages depending on the number of exhibits.
- Finalizing the brief for filing could take three weeks to proof, copy and bind.

In addition to the foregoing, one of the current paralegal positions serves as the only secretary for the APDC Director. While the Executive Director does most of her own typing, the paralegal puts everything in final form and handles scheduling and filing. This paralegal is the primary appellate paralegal, so her time is spread terribly thin. Further, she serves as the secretary for all Commission

meetings and has many duties in this regard. The simultaneous scheduling of trials and appellate briefs can make access to a paralegal nearly impossible.

Because of the heavy caseload and the extensive time necessary to complete the relevant tasks, we feel the need for an additional paralegal position is justified and very necessary.

M & O Request

We are requesting maintenance and operation budget increases:

- In state and out-of-state travel - The above-mentioned positions require an extensive amount of travel to interview witnesses and prepare for trial. Some of this travel is out of state particularly with Hispanic clients
- Conference and Seminar Fees - to maintain legal or specialist certification and training
- Membership Dues - Bar Association Dues
- Office Supplies -chair, desk and general office supplies
- Computers - the above mentioned positions will require desktop computers
- Parking and phone services

for the above position additions. These of course will not be needed if positions are not approved.

In the administration office we are requesting increases in:

- In state mileage - increase in need for State reimbursement goes up according to gas price increases. Additionally, the increase in cases requires more travel. Our attorneys, mitigation specialists, investigators and paralegals are assigned to cases throughout the state. The cases require many trips to the area of origin. One cannot effectively represent a defendant in Pocahontas, unless one makes repeated visits there. It is not unusual for the CCA staff to be on the road three days a week.
- Meals/lodging - as gas prices rise, so does everything else. A lot of the travel is done in one day but there are cases, especially during trials, when our staff has to spend weeks at a location.

The Arkansas State Building Authority notified the Commission that our rent would be increased from \$12.00 per square foot to \$12.54 per square foot. The Commission is asking for the maintenance and operation budget to be increased by the necessary amount.

IT Services

The Commission is requesting an increase in our maintenance and operation budget to cover the Enterprise Server Services, phone long distance service, Help Desk charges and New Runs. Our software request will be for software licenses, Microsoft Office 2000, to stay in compliance with State directives and added software Windows XP Professional that will be needed to continue to stay current with everyday requirements. If we are to stay in compliance with the State directives regarding hardware we will need to replace 114 workstations out of warranty; 3 Gateway desktop workstations are 5 years old, 101 Dell workstations are 4 years old, and 10 Dell workstations will expire in 2007 and a 10% replacement ratio for damaged PC's. The Commission's File Server is now

eight years old and will need replacement parts and upgrades. The file server operating system is currently running with Windows Server 2000 and will be need to upgraded to Windows Server 2003 Standard Edition to continue to operate efficiently. The Commission is requesting funding so that our file server can be updated and replacements parts purchased if needed.

Appropriation 1VA - Public Defender Ombudsman

Personnel

The Commission is transferring one position to appropriation 530 - Trial Public Defender, to facilitate better internal control. The position will be utilized to help with payroll, accounts payable and receivable.

Audit Findings

DIVISION OF LEGISLATIVE AUDIT
 AUDIT OF :
 ARKANSAS PUBLIC DEFENDER COMMISSION
 FOR THE YEAR ENDED JUNE 30, 2005

Findings	Recommendations
None	None

Employment Summary

	Male	Female	Total	%
White Employees	134	114	248	94 %
Black Employees	5	10	15	6 %
Other Racial Minorities	0	1	1	0 %
Total Minorities			16	6 %
Total Employees			264	100 %

Publications

A.C.A 25-1-204

Name	Statutory Authorization	Required for		# Of Copies	Reason (s) for Continued Publication and Distribution
		Governor	General Assembly		
Annual Reports	ACA 16-87-203	Y	Y	40	Required by Law

Department Appropriation

Appropriation		Historical Data						Agency Request and Executive Recommendation							
		2005-2006		2006-2007		2006-2007		2007-2008				2008-2009			
		Actual	Pos	Budget	Pos	Authorized	Pos	Agency	Pos	Executive	Pos	Agency	Pos	Executive	Pos
1VA	Ombudsman Program	186,156	3	192,716	3	319,010	6	139,916	2	139,916	2	139,916	2	139,916	2
337	Public Defender-Operations	1,410,568	15	1,427,838	15	1,406,403	15	1,711,824	17	1,618,689	17	1,564,724	17	1,564,724	17
530	Public Defender -Trial Office	14,587,424	196	15,512,525	195	15,389,861	195	16,291,837	206	16,029,072	201	16,275,587	206	16,020,072	201
Total		16,184,148	214	17,133,079	213	17,115,274	216	18,143,577	225	17,787,677	220	17,980,227	225	17,724,712	220

Funding Sources			%		%		%		%		%		%
Fund Balance	4000005	1,342,700	7.5	1,816,368	9.7			1,593,117	8.8	1,593,117	9.0	0	0.0
State Central Services	4000035	7,524,937	41.8	8,023,785	42.8			7,532,108	41.5	7,176,208	40.3	8,961,875	49.8
Bail Bond Fees	4000115	1,248,107	6.9	1,070,069	5.7			1,165,542	6.4	1,165,542	6.6	1,165,542	6.5
State Administration of Justice	4000470	6,908,027	38.4	6,908,027	36.9			6,908,027	38.1	6,908,027	38.8	6,908,027	38.4
Transfer from DHHS-DYS	4000515	130,500	0.7	122,407	0.7			139,916	0.8	139,916	0.8	139,916	0.8
User / Attorney Fees	4000725	846,245	4.7	785,540	4.2			804,867	4.4	804,867	4.5	804,867	4.5
Total Funds		18,000,516	100.0	18,726,196	100.0			18,143,577	100.0	17,787,677	100.0	17,980,227	100.0
Excess Appropriation/(Funding)		(1,816,368)		(1,593,117)				0		0		0	
Grand Total		16,184,148		17,133,079				18,143,577		17,787,677		17,980,227	

Agency Position Usage Report

FY2004-2005						FY2005-2006						FY2006-2007					
Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused	Authorized in Act	Budgeted			Unbudgeted	% of Authorized Unused
	Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total			Filled	Unfilled	Total	Total	
211	208	0	208	3	1.42%	216	213	0	213	3	1.39%	216	213	0	213	3	1.39%

Employment Summary Report shows 264 employees due to Job Share.

Analysis of Budget Request

Appropriation: 1VA - Ombudsman Program

Funding Sources: HSC-State Central Services Fund

The Ombudsman Division of the Arkansas Public Defender Commission was created during the 82nd General Session for the purpose of insuring that children placed within the custody of the Department of Health and Human Services (DHHS) - Division of Youth Services are receiving necessary services designed to keep them safe both mentally and physically. The Ombudsman Division of the Arkansas Public Defender Commission is funded directly from funds transferred by the DHHS. This transfer is for the benefit of the Juvenile Ombudsman Program of the Public Defender Commission.

A cost of living increase is not incorporated in Base Level pending the outcome of the Classification and Compensation Study. FY07 salary levels have been held flat each year for all incumbents. Personal Services Matching may reflect increases in the Base Level due to the Social Security Tax maximum income limit and certain increases in Worker's Compensation and Unemployment Tax rates. Personal Services Matching also includes a \$30 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$350 per month.

The Agency is transferring one position to appropriation 530 - Trial Public Defender, to facilitate better internal control. The position will be utilized to help with payroll, accounts payable and receivable. This will cause a negative Change Level request of \$53,970 in each year.

Executive Recommendation provides for Agency Request.

Appropriation

Appropriation: 1VA Ombudsman Program
Funding Sources: HSC-State Central Services Fund

Historical Data

Agency Request and Executive Recommendation

Commitment Item	2005-2006	2006-2007	2006-2007	2007-2008			2008-2009		
	Actual	Budget	Authorized	Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	145,180	150,758	249,144	150,758	109,368	109,368	150,758	109,368	109,368
#Positions	3	3	6	3	2	2	3	2	2
Personal Services Matching 5010003	40,976	41,958	69,866	43,128	30,548	30,548	43,128	30,548	30,548
Total	186,156	192,716	319,010	193,886	139,916	139,916	193,886	139,916	139,916
Funding Sources									
Fund Balance 4000005	6,758	10,093		0	0	0	0	0	0
Bail Bond Fees 4000115	58,991	60,216		0	0	0	0	0	0
Transfer from DHHS-DYS 4000515	130,500	122,407		139,916	139,916	139,916	139,916	139,916	139,916
Total Funding	196,249	192,716		139,916	139,916	139,916	139,916	139,916	139,916
Excess Appropriation/(Funding)	(10,093)	0		53,970	0	0	53,970	0	0
Grand Total	186,156	192,716		193,886	139,916	139,916	193,886	139,916	139,916

The Agency is transferring one position to appropriation 530 – Trial Public Defender appropriation to facilitate better internal control. The position will be utilized to help with payroll and accounts payable and receivable.

Change Level by Appropriation

Appropriation: 1VA-Ombudsman Program
Funding Sources: HSC-State Central Services Fund

Agency Request

Change Level		2007-2008	Pos	Cumulative	% of BL	2008-2009	Pos	Cumulative	% of BL
BL	Base Level	193,886	3	193,886	100.0	193,886	3	193,886	100.0
C07	Agency Transfer	(53,970)	(1)	139,916	72.1	(53,970)	(1)	139,916	72.1

Executive Recommendation

Change Level		2007-2008	Pos	Cumulative	% of BL	2008-2009	Pos	Cumulative	% of BL
BL	Base Level	193,886	3	193,886	100.0	193,886	3	193,886	100.0
C07	Agency Transfer	(53,970)	(1)	139,916	72.1	(53,970)	(1)	139,916	72.1

Justification

C07	The Agency is transferring one position to 530 – Trial Public Defender appropriation to facilitate better internal accounting control. The position will be utilized to help with payroll, accounts payable and receivable.
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Analysis of Budget Request

Appropriation: 337 - Public Defender-Operations

Funding Sources: HSC-State Central Services Fund

The Arkansas Public Defender Commission was established in 1993 to address a variety of problems and concerns related to the representation of indigent criminal defendants in Capital Conflicts and Appeals to the Supreme Court in the State of Arkansas. The State Operations appropriation is funded from the State Central Services Fund.

A cost of living increase is not incorporated in Base Level pending the outcome of the Classification and Compensation Study. FY07 salary levels have been held flat each year for all incumbents. Personal Services Matching may reflect increases in the Base Level due to the Social Security Tax maximum income limit and certain increases in Worker's Compensation and Unemployment Tax rates. Personal Services Matching also includes a \$30 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$350 per month.

The Base Level Request is \$1,433,632 in both FY08 and FY09.

The Change Level Requests submitted are \$278,192 in FY08 and \$131,092 in FY09 and are summarized as follows:

1. Requesting two new positions - a Class B Public Defenders and a Paralegal with Regular Salary, Personal Service Matching, Operating Expenses and Conference & Travel Expenses totaling \$102,442 and \$100,242. All death cases are required to have two attorneys. The Agency currently has two paralegal that support eight capital conflict attorneys. These positions will help ease the number of caseloads for each attorney.
2. Requesting \$14,470 in FY08 and \$14,550 in FY09 for an increase in Operating Expenses. The increases are for rent, mileage and meals and lodging. This is due to number of capital cases through out the State and the increase cost of lodging and gas reimbursements.
3. Requesting 114 new computers and software licenses for FY08 and software and server upgrade for FY09. This increase will allow at least one computer per district office. Several offices do not have computers or have computers acquired from the counties that are seven (7) years old or older. This will allow the Commission to access the Internet for legal research and correspondence between attorneys and the general public. Total request for Technology Equipment is \$161,280 in FY08 and \$16,300 in FY09.

The Executive Recommendation provides for the Agency Request with the exception of FY08 Operating Expenses and Conference & Travel Expenses which is recommended at \$92,310 and \$2,690 respectively.

Appropriation

Appropriation: 337 Public Defender-Operations
Funding Sources: HSC-State Central Services Fund

Historical Data

Agency Request and Executive Recommendation

Commitment Item		Historical Data			Agency Request and Executive Recommendation			Agency Request and Executive Recommendation		
		2005-2006 Actual	2006-2007 Budget	2006-2007 Authorized	2007-2008			2008-2009		
					Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries	5010000	871,392	885,332	877,972	885,332	953,238	953,238	885,332	953,238	953,238
#Positions		15	15	15	15	17	17	15	17	17
Extra Help	5010001	11,983	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
#Extra Help		2	1	3	3	3	3	3	3	3
Personal Services Matching	5010003	234,132	237,413	223,338	243,207	265,358	265,358	243,207	265,358	265,358
Operating Expenses	5020002	180,093	180,093	180,093	180,093	365,538	272,403	180,093	218,438	218,438
Conference & Travel Expenses	5050009	16,968	17,000	17,000	17,000	19,690	19,690	17,000	19,690	19,690
Professional Fees	5060010	96,000	96,000	96,000	96,000	96,000	96,000	96,000	96,000	96,000
Data Processing	5090012	0	0	0	0	0	0	0	0	0
Capital Outlay	5120011	0	0	0	0	0	0	0	0	0
Total		1,410,568	1,427,838	1,406,403	1,433,632	1,711,824	1,618,689	1,433,632	1,564,724	1,564,724
Funding Sources										
State Central Services	4000035	1,410,568	1,427,838		1,433,632	1,711,824	1,618,689	1,433,632	1,564,724	1,564,724
Total Funding		1,410,568	1,427,838		1,433,632	1,711,824	1,618,689	1,433,632	1,564,724	1,564,724
Excess Appropriation/(Funding)		0	0		0	0	0	0	0	0
Grand Total		1,410,568	1,427,838		1,433,632	1,711,824	1,618,689	1,433,632	1,564,724	1,564,724

The FY07 Budgeted amount in Regular Salaries and Personal Services Matching exceeds the authorized amount due to salary and matching rate adjustments during the 2005-2007 biennium.

Change Level by Appropriation

Appropriation: 337-Public Defender-Operations
Funding Sources: HSC-State Central Services Fund

Agency Request

Change Level		2007-2008	Pos	Cumulative	% of BL	2008-2009	Pos	Cumulative	% of BL
BL	Base Level	1,433,632	15	1,433,632	100.0	1,433,632	15	1,433,632	100.0
C01	Existing Program	113,912	2	1,547,544	107.9	114,792	2	1,548,424	108.0
C08	Technology	164,280	0	1,711,824	119.4	16,300	0	1,564,724	109.1

Executive Recommendation

Change Level		2007-2008	Pos	Cumulative	% of BL	2008-2009	Pos	Cumulative	% of BL
BL	Base Level	1,433,632	15	1,433,632	100.0	1,433,632	15	1,433,632	100.0
C01	Existing Program	113,912	2	1,547,544	107.9	114,792	2	1,548,424	108.0
C08	Technology	71,145	0	1,618,689	112.9	16,300	0	1,564,724	109.1

Justification

C01	APDC is asking for 2 new positions and the Operating Expenses to support these positions. One attorney position and one paralegal position are being requested: A Capital Conflicts Attorney (CCA) is needed to address the rise in murder cases. All death cases are required to have two attorneys. The paralegal helps support eight Capital Conflict Attorneys. The paralegal's duties include preparing trial notes, organizing and indexing exhibits, preparing motions and briefs during trial, traveling with attorneys and investigators to prepare for trials, transcribing witness statements, and preparing subpoenas. The Commission is requesting an increase in Operating Expenses for mileage and meals/lodging due to an increase in cases requiring more travel. Some cases require our staff to spend weeks at a location. Our attorneys, mitigation specialists, investigators and paralegals are assigned to cases throughout the State.
C08	APDC is requesting the hardware and software to support the two positions requested. The Commission is also requesting the funds to replace out of warranty hardware, additional software and software license to bring the Commission into compliance with State directives and to update the Commission's eight-year-old server. Cost of the connections to DIS is comparable to rent, of the office, and has to be paid.

Analysis of Budget Request

Appropriation: 530 - Public Defender -Trial Office

Funding Sources: HCS-State Central Services Fund

The Trial Public Defender Office of the Arkansas Public Defender Commission was created by Act 1341 of 1997 and provides for the establishment of a statewide public defender system in Arkansas. The Trial Public Defender Office operates under the supervision of the Executive Director of the Arkansas Public Defender Commission. Duties of all public defenders are to provide for competent, effective, and uniform representation of indigent criminal defendants throughout the State.

The Trial Public Defender Office is funded from a share of those funds remitted by the cities and counties from court costs and filing fees for deposit into the State Administration of Justice Fund. A portion of those funds is then allocated for deposit into the State Central Services Fund for the benefit of the Public Defender Commission per Arkansas Code §16-10-310.

With the enactment of Act 1778 of 2003 and Act 1956 of 2005, which allowed for a fee to be charged and collected by all bail bond companies on each bond, the additional revenue helps defray the cost of the public defender system, both statewide and in each individual county.

A cost of living increase is not incorporated in Base Level pending the outcome of the Classification and Compensation Study. FY07 salary levels have been held flat each year for all incumbents. Personal Services Matching may reflect increases in the Base Level due to the Social Security Tax maximum income limit and certain increases in Worker's Compensation and Unemployment Tax rates. Personal Services Matching also includes a \$30 increase in the monthly contribution for State employee's health insurance for a total State match per budgeted employee of \$350 per month.

Special Language authorized in Act 1637 of 2001 restricted funding support for certain levels of personal services, maintenance and operation, and extra help costs to the extent that fees generated through the provisions of Arkansas Code § 5-4-303(g) and §16-87-213 (User & Attorney Fees) are available.

The Base Level Request is \$15,587,767 for both FY08 and FY09.

Ten new positions and Operating Expenses to support these positions are being requested. Four attorney positions are needed in order to meet the rising number of caseloads. The additional Drug Courts have added to the court and time demands of the public defenders. Pursuant to *Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527, 156 L.Ed.2d471, (2003), the United States Supreme Court has said that in any and all death cases, one must have a mitigation specialist to thoroughly and exhaustively research the capital defendant's social history. Thus the request for three Mitigation Specialist is needed. Three Management Project Analyst positions, who would act as Spanish interpreters are being requested. Interpretive services are literally needed on a daily basis. Currently the Commission pays consultants at a rate of \$40 to \$45 per hour for these services. Having someone on staff will more than pay for itself in the long run.

The Change Level Requests submitted are \$704,070 in FY08 and \$687,820 in FY09 and are

summarized as follows:

1. Requesting a total of 10 positions - three (3) Mitigation Specialist, four (4) Class B Public Defenders, and three (3) Management Project Analysts II with Regular Salary, Personal Service Matching and Operating Expense totaling \$495,100 and \$478,850.
2. Requesting to move one position from Ombudsman program to the Trial Public Defender program. This will facilitate better internal accounting control. The position will be utilized to help with payroll, accounts payable and receivable.
3. Requesting a \$5,000 increase in Operating Expense for the Northwest Arkansas Conflicts Office for Meals & Lodging; increase in number of cases will require more travel and overnight stays.
4. Act 1956 of 2005 gave the Commission an additional ten dollars to help defray the cost of the Public Defender system. The Commission has to pay the counties - public defender's offices three dollars of the ten dollars collected. The Commission is requesting to set up a special line item and appropriation specifically for the payments to the Counties. Special Language is being requested to address the process of disbursing the three dollars to each of the seventy-five counties.

The Executive Recommendation provides for the Base Level for both years of the biennium with the following increases:

- Operating Expenses of \$24,000 for FY08 and \$15,000 for FY09
- Conference and Travel Expenses of \$2,500 each year
- \$150,000 each year to pay county public defender's offices for Act 1956 of 2005
- Transfer of one position from the Ombudsman Program (1VA) to the Trial Public Defender Program (530)
- Five additional positions:
 - (1) Class B Public Defender
 - (2) Mitigation Specialist
 - (2) Management Project Analyst II

Appropriation

Appropriation: 530 Public Defender -Trial Office
Funding Sources: HCS-State Central Services Fund

Historical Data

Agency Request and Executive Recommendation

Commitment Item	2005-2006	2006-2007	2006-2007	2007-2008			2008-2009		
	Actual	Budget	Authorized	Base Level	Agency	Executive	Base Level	Agency	Executive
Regular Salaries 5010000	10,610,260	10,844,000	10,850,200	10,844,000	11,222,862	11,043,243	10,844,000	11,222,862	11,043,243
#Positions	196	195	195	195	206	201	195	206	201
Extra Help 5010001	13,610	15,000	15,000	15,000	15,000	15,000	15,000	15,000	15,000
#Extra Help	2	1	3	3	3	3	3	3	3
Personal Services Matching 5010003	2,838,710	2,939,825	2,810,961	3,016,067	3,138,985	3,081,629	3,016,067	3,138,985	3,081,629
Operating Expenses 5020002	97,500	192,700	192,700	192,700	239,810	216,700	192,700	223,560	207,700
Conference & Travel Expenses 5050009	0	0	0	0	5,180	2,500	0	5,180	2,500
Professional Fees 5060010	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000	750,000
Data Processing 5090012	0	0	0	0	0	0	0	0	0
Capital Outlay 5120011	3,278	1,000	1,000	0	0	0	0	0	0
Public Defender Commission Programs5900046	274,066	770,000	770,000	770,000	770,000	770,000	770,000	770,000	770,000
Bail Bond County Public Defender Prog5900047	0	0	0	0	150,000	150,000	0	150,000	150,000
Total	14,587,424	15,512,525	15,389,861	15,587,767	16,291,837	16,029,072	15,587,767	16,275,587	16,020,072
Funding Sources									
Fund Balance 4000005	1,335,942	1,806,275		1,593,117	1,593,117	1,593,117	0	0	0
State Central Services 4000035	6,114,369	6,595,947		5,266,214	5,820,284	5,557,519	6,859,331	7,397,151	7,141,636
Bail Bond Fees 4000115	1,189,116	1,009,853		1,015,542	1,165,542	1,165,542	1,015,542	1,165,542	1,165,542
State Administration of Justice 4000470	6,908,027	6,908,027		6,908,027	6,908,027	6,908,027	6,908,027	6,908,027	6,908,027
User / Attorney Fees 4000725	846,245	785,540		804,867	804,867	804,867	804,867	804,867	804,867
Total Funding	16,393,699	17,105,642		15,587,767	16,291,837	16,029,072	15,587,767	16,275,587	16,020,072
Excess Appropriation/(Funding)	(1,806,275)	(1,593,117)		0	0	0	0	0	0
Grand Total	14,587,424	15,512,525		15,587,767	16,291,837	16,029,072	15,587,767	16,275,587	16,020,072

The FY07 Budgeted amount in Personal Services Matching exceeds the authorized amount due to matching rate adjustments during the 2005-2007 biennium.

Change Level by Appropriation

Appropriation: 530-Public Defender -Trial Office

Funding Sources: HCS-State Central Services Fund

Agency Request

Change Level		2007-2008	Pos	Cumulative	% of BL	2008-2009	Pos	Cumulative	% of BL
BL	Base Level	15,587,767	195	15,587,767	100.0	15,587,767	195	15,587,767	100.0
C01	Existing Program	636,600	10	16,224,367	104.0	633,850	10	16,221,617	104.0
C07	Agency Transfer	53,970	1	16,278,337	104.4	53,970	1	16,275,587	104.4
C08	Technology	13,500	0	16,291,837	104.5	0	0	16,275,587	104.4

Executive Recommendation

Change Level		2007-2008	Pos	Cumulative	% of BL	2008-2009	Pos	Cumulative	% of BL
BL	Base Level	15,587,767	195	15,587,767	100.0	15,587,767	195	15,587,767	100.0
C01	Existing Program	437,941	5	16,025,708	102.8	435,691	5	16,023,458	102.8
C07	Agency Transfer	53,970	1	16,079,678	103.1	53,970	1	16,077,428	103.1
C08	Technology	6,750	0	16,086,428	103.2	0	0	16,077,428	103.1
C13	Not Recommended	(57,356)	0	16,029,072	102.8	(57,356)	0	16,020,072	102.7

Justification

C01	<p>APDC is asking for 10 new positions and the Operating Expense to support these positions. Four attorney positions, three Mitigation Specialists and three Management Project Analysts, who would act as Spanish interpreters, have been requested in order to meet the increasing caseload needs, court appearances and language barriers. The four attorney positions would be used to cover rising caseloads. The addition of drug courts in many areas has added to the court and time demands of public defenders. Pursuant to Wiggins v. Smith, 539 U.S. 510, 123 S.Ct. 2527, 156 L.Ed.2d 471, (2003), the United States Supreme Court has said that in any and all death cases, one must have a mitigation specialist to thoroughly and exhaustively research the capital defendant's social history. The request for three (3) Management Project Analyst II on staff rather than privately retained Interpreters is necessary to carrying out the task of providing effective assistance of counsel and being fiscally responsible. Over the last several years, the need for an interpreter has become apparent in the foregoing areas and has, in fact, gotten to the point that it is essential to carrying out the task of providing effective assistance of counsel. We literally need interpretive services on a daily basis. At this time, the Commission pays interpreters at the rate of \$40 to \$45 per hour. With the ever-increasing need, this expenditure will be expanding greatly. Having someone on staff will more than pay for itself in the long run.</p>
C07	<p>APDC is transferring one position to 530 – Trial Public Defender appropriation to facilitate better internal accounting control. The position will be utilized to help with payroll, accounts payable and receivable.</p>
C08	<p>The Agency is requesting the hardware and software to support the ten positions requested.</p>